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11 STAND FOR SAN JOSE, EILEEN HANNAN,
12 MICHELLE BRENOT, ROBERT BROWN, KAREN
13 SHIREY, FRED SHIREY, and ROBERT SHIELDS

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 IN AND FOR THE COUNTY OF SANTA CLARA

16 STAND FOR SAN JOSE; EILEEN
17 HANNAN; MICHELLE BRENOT;
18 ROBERT BROWN; KAREN SHIREY;
19 FRED SHIREY; and ROBERT SHIELDS,

20 Petitioners and Plaintiffs,

21 vs.

22 CITY OF SAN JOSE; CITY COUNCIL OF
23 THE CITY OF SAN JOSE;
24 REDEVELOPMENT AGENCY OF THE
25 CITY OF SAN JOSE; DIRIDON
26 DEVELOPMENT AUTHORITY; DOES 1
27 through 10, inclusive,

28 Respondents and Defendants.

ATHLETICS INVESTMENT GROUP LLC;
DOES 11 through 20, inclusive,

Real Parties in Interest.

ENDORSED

2011 DEC -7 A 12:16

David H. Naranjo, Clerk of the Superior Court
County of Santa Clara, California
By: G. Duarte Deputy Clerk

Case No. 111-CV-214196

VERIFIED FIRST AMENDED
PETITION FOR WRIT OF
MANDAMUS AND COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF AND FOR
ATTORNEY'S FEES

[California Environmental Quality
Act, Pub. Res. Code §§ 21167, 21168,
and 21168.5; San Jose Municipal Code
§ 4.95; Illegal Sale of Public Property,
C.C.P. § 526a, Health & Safety Code §
34167.5; C.C.P. §§ 1085 and 1094.5]

Petitioners and Plaintiffs, Stand for San Jose ("SFSJ"), Eileen Hannan, Michell Brenot, Robert Brown, Karen Shirey, Fred Shirey, and Robert Shields (collectively, "Petitioners"), hereby petition for a writ of mandamus and complain for declaratory and injunctive relief and for attorney's fees against Respondents and Defendants, the City of San Jose ("City"), the City Council of the City of San Jose ("City Council"), the Redevelopment Agency of the City of San Jose ("Redevelopment Agency" or "Agency"), and the Diridon Development Authority ("DDA") (collectively, "Respondents"), and against Real Party in Interest, Athletics Investment Group LLC ("AIG"), and for their petition and complaint allege as follows:

INTRODUCTION

1. This petition and complaint challenges certain actions taken by Respondents on November 8, 2011, to sell publicly-owned property to a private party for a downtown baseball stadium (the "Ballpark Project"). Before taking these actions, Respondents failed to comply with a number of state and local laws, despite their legal duty to do so, including the following:

- The California Environmental Quality Act, Public Resources Code § 21200 *et seq.* ("CEQA"), which requires that a legally sufficient environmental impact report ("EIR") be prepared for a project, such as the Ballpark Project, that will cause significant environmental effects;
- San Jose Municipal Code § 4.95, which requires that a public vote be held before the City participates, by using tax dollars, in the building of a sports facility; and
- Code of Civil Procedure § 526a which prohibits expenditure of public funds, or sale or use of public property, that is illegal.

2. As alleged herein, the City and its agencies, in granting to AIG an exclusive option to buy public property at a 50% discount, abused their powers and ran roughshod over their legal duties, including their duties to protect the public's right to vote and to

1 comply with laws designed to protect the environment, prior to committing to sell public
2 lands for a Ballpark Project.

3 3. Beginning in or about 2005, the Redevelopment Agency spent \$25 million in
4 tax-increment funds over several years in acquiring certain parcels (the "Diridon Property")
5 in the downtown Diridon/Arena area. During this period, the City claimed there was no
6 definite ballpark project, and thus no need for a public vote under Municipal Code § 4.95,
7 because the Diridon Property was being acquired for purposes of housing. Nonetheless, the
8 City also commenced an environmental review for a potential ballpark project, publishing a
9 baseball stadium EIR in 2007 (the "2007 EIR"), and a supplemental EIR for a modified
10 stadium in 2010 (the "2010 SEIR"). In both instances, the City received substantial
11 comments and criticisms that the environmental review was inadequate and flawed. In
12 2010, the City determined not to approve any project based on these CEQA review
13 documents, but indicated instead that there would be additional environmental review
14 "when we have a project" and promised a public vote "prior to . . . making any decision as
15 to a potential ballpark."

16 4. But in 2011 the City abruptly changed course. When State legislation was
17 proposed that would require sale of redevelopment lands such as the Diridon Property for
18 other municipal purposes, the City and the Redevelopment Agency formed the DDA as a
19 joint powers authority and then transferred the Diridon Property to the DDA at no cost in an
20 effort to avoid the new law. Once the new law passed, the City and others filed a legal
21 challenge in the California Supreme Court. Then, on November 8, just two days before
22 argument in the Supreme Court, the City Council and the DDA, in a joint session, voted to
23 "tie up" the Diridon Property with an option agreement (the "Option Agreement") to sell
24 the Property to AIG. By thus "encumbering" the Property with an irrevocable option
25 granted to a private party, Respondents hoped to get around the new law even if it was
26 upheld by the Supreme Court. Under the Option Agreement, the DDA committed to sell
27 the Diridon Property for half its value. The Property, originally acquired for \$25 million,
28

1 and currently appraised at \$14 million, would be sold under the option for only \$6.9 million
2 for the private ballpark use.

3 5. By approving the Option Agreement and the sale of the Diridon Property to
4 a private party for the Ballpark Project, Respondents abused their discretion and failed to
5 comply with law, in that they failed to cure the deficiencies in the 2007 EIR and the 2010
6 SEIR, and failed to update those documents to address changed circumstances and
7 significant new information; failed to hold a public vote, as required by Municipal Code §
8 4.95, before committing to sell public property at a 50% discount for a private ballpark
9 project; and committed an illegal expenditure of public funds and property in violation of
10 CEQA, Municipal Code § 4.95, and the Community Redevelopment Law.

11 6. Accordingly, this petition and complaint seeks to set aside the Option
12 Agreement and related actions, and to restrain Respondents from the sale of the Diridon
13 Property, until they first meet all legal requirements and act in accordance with law as
14 alleged more fully herein.

15 PARTIES

16 7. Petitioner and Plaintiff SFSJ is an unincorporated coalition of entities and
17 individuals, including residents and taxpayers in San Jose and the County of Santa Clara,
18 and the San Jose Giants, formed and dedicated to addressing the risks to the environment
19 and financial issues posed by the Ballpark Project. Members of SFSJ reside and/or work in
20 San Jose and Santa Clara County, including the area of the proposed Ballpark Project, and
21 will be affected by the Project's significant environmental impacts. SFSJ's members are
22 beneficially interested in the City's public planning and environmental review processes,
23 and seek to promote the public interest by ensuring that environmental issues critical to
24 taxpayers, jobs, local businesses and neighborhoods are put first as the City evaluates
25 proposed development projects that have the potential to significantly affect the
26 environment and the downtown area. SFSJ and its members seek to ensure that before the
27 Diridon Property is sold to a private party for a ballpark use, the City's elected decision-
28 makers—as well as the voting public—have all of the environmental information required

1 under CEQA and other information necessary to make informed decisions for the sale of
2 public lands and downtown development. SFSJ members are interested as citizens and
3 taxpayers in making sure that San Jose and its agencies protect and promote the public
4 interest by complying with State and local laws, including CEQA, San Jose Municipal
5 Code § 4.95, and the Community Redevelopment Law. In 2010-2011, SFSJ submitted
6 numerous written and oral comments to Respondents setting forth the environmental and
7 other objections to the Ballpark Project.

8 8. Petitioner and Plaintiff Eileen Hannan (“Petitioner Hannan”) is a resident,
9 voter, property owner, and taxpayer in the City of San Jose, and seeks to protect her
10 interests and the interests of those similarly situated in San Jose. Petitioner Hannan is
11 employed in San Jose, commutes in and around the City, and uses freeways and roadways
12 on a regular basis that will be impacted by the Ballpark Project. Petitioner Hannan is a
13 member and supporter of SFSJ, with similar interests and concerns as those alleged in
14 paragraph 7 above. Petitioner Hannan is beneficially interested in and affected by the
15 City’s planning and environmental review processes, and seeks to promote the public
16 interest by ensuring that environmental issues critical to taxpayers, jobs, local businesses
17 and neighborhoods are considered in accordance with law; and that the City’s elected
18 decision-makers, as well as the voting public, have all of the environmental information
19 required under CEQA and other information necessary to make informed decisions for the
20 sale of public lands for downtown development. Petitioner Hannan seeks through this
21 petition and complaint to protect the public interest by ensuring that San Jose and its
22 agencies comply with state and local laws, including CEQA, San Jose Municipal Code §
23 4.95, and the Community Redevelopment Law.

24 9. Petitioner and Plaintiff Michelle Brenot (“Petitioner Brenot”) is a resident,
25 voter, property owner, and taxpayer in the City of San Jose, and seeks to protect her
26 interests and the interests of those similarly situated in San Jose. Petitioner Brenot lives in
27 downtown San Jose, commutes from and around the City, and uses freeways and roadways
28 on a regular basis that will be impacted by the Ballpark Project. Petitioner Brenot is a

1 member and supporter of SFSJ, with similar interests and concerns as those alleged in
2 paragraph 7 above. Petitioner Brenot is beneficially interested in and affected by the City's
3 planning and environmental review processes, and seeks to promote the public interest by
4 ensuring that environmental issues critical to taxpayers, jobs, local businesses and
5 neighborhoods are considered in accordance with law; and that the City's elected decision-
6 makers, as well as the voting public, have all of the environmental information required
7 under CEQA and other information necessary to make informed decisions for the sale of
8 public lands for downtown development. Petitioner Brenot seeks through this petition and
9 complaint to protect the public interest by ensuring that San Jose and its agencies comply
10 with state and local laws, including CEQA, San Jose Municipal Code § 4.95, and the
11 Community Redevelopment Law.

12 10. Petitioner and Plaintiff Robert Brown ("Petitioner Brown") is a resident of
13 Santa Clara County, residing in Los Gatos, and employed in San Jose in proximity to the
14 proposed Ballpark Project site. Among other things, Petitioner Brown commutes to and
15 around San Jose, and uses freeways and roadways on a regular basis that will be adversely
16 impacted by the Ballpark Project. Petitioner Brown is beneficially interested in and
17 affected by the City's planning and environmental review processes, and seeks to promote
18 the public interest by ensuring that environmental issues critical to taxpayers, jobs, local
19 businesses and neighborhoods are considered in accordance with law; and that the City's
20 elected decision-makers, as well as the voting public, have all of the environmental
21 information required under CEQA and other information necessary to make informed
22 decisions for the sale of public lands for downtown development. Petitioner Brown seeks
23 through this petition and complaint to protect the public interest by ensuring that San Jose
24 and its agencies comply with state and local laws, including CEQA, San Jose Municipal
25 Code § 4.95, and the Community Redevelopment Law.

26 11. Petitioner and Plaintiff Karen Shirey ("Petitioner Karen Shirey") is a
27 resident, voter, property owner, and taxpayer in the City of San Jose, and seeks to protect
28 her interests and the interests of those similarly situated in the City. Petitioner Karen Shirey

1 resides in San Jose, and uses freeways and roadways on a regular basis that will be
2 impacted by the Ballpark Project. Petitioner Karen Shirey is a member and supporter of
3 SFSJ, with similar interests and concerns as those alleged in paragraph 7 above. Petitioner
4 Karen Shirey is beneficially interested in and affected by the City's planning and
5 environmental review processes, and seeks to promote the public interest by ensuring that
6 environmental issues critical to taxpayers, jobs, local businesses and neighborhoods are
7 considered in accordance with law; and that the City's elected decision-makers, as well as
8 the voting public, have all of the environmental information required under CEQA and
9 other information necessary to make informed decisions for the sale of public lands for
10 downtown development. Petitioner Karen Shirey seeks through this petition and complaint
11 to protect the public interest by ensuring that San Jose and its agencies comply with state
12 and local laws, including CEQA, San Jose Municipal Code § 4.95, and the Community
13 Redevelopment Law.

14 12. Petitioner and Plaintiff Fred Shirey ("Petitioner Fred Shirey") is a resident,
15 voter, property owner, and taxpayer in the City of San Jose, and seeks to protect his
16 interests and the interests of those similarly situated in the City. Petitioner Fred Shirey
17 resides in San Jose, and uses freeways and roadways on a regular basis that will be
18 impacted by the Ballpark Project. Petitioner Fred Shirey is a member and supporter of
19 SFSJ, with similar interests and concerns as those alleged in paragraph 7 above. Petitioner
20 Fred Shirey is beneficially interested in and affected by the City's planning and
21 environmental review processes, and seeks to promote the public interest by ensuring that
22 environmental issues critical to taxpayers, jobs, local businesses and neighborhoods are
23 considered in accordance with law; and that the City's elected decision-makers, as well as
24 the voting public, have all of the environmental information required under CEQA and
25 other information necessary to make informed decisions for the sale of public lands for
26 downtown development. Petitioner Fred Shirey seeks through this petition and complaint
27 to protect the public interest by ensuring that San Jose and its agencies comply with state
28

1 and local laws, including CEQA, San Jose Municipal Code § 4.95, and the Community
2 Redevelopment Law.

3 13. Petitioner and Plaintiff Robert Shields (“Petitioner Shields”) is a resident,
4 voter, property owner, and taxpayer in the City of San Jose, and seeks to protect his
5 interests and the interests of those similarly situated in the City. Petitioner Shields resides
6 in San Jose, and uses freeways and roadways on a regular basis that will be impacted by the
7 Ballpark Project. Petitioner Shields is a member and supporter of SFSJ, with similar
8 interests and concerns as those alleged in paragraph 7 above. Petitioner Shields is
9 beneficially interested in and affected by the City’s planning and environmental review
10 processes, and seeks to promote the public interest by ensuring that environmental issues
11 critical to taxpayers, jobs, local businesses and neighborhoods are considered in accordance
12 with law; and that the City’s elected decision-makers, as well as the voting public, have all
13 of the environmental information required under CEQA and other information necessary to
14 make informed decisions for the sale of public lands for downtown development. Petitioner
15 Shields seeks through this petition and complaint to protect the public interest by ensuring
16 that San Jose and its agencies comply with state and local laws, including CEQA, San Jose
17 Municipal Code § 4.95, and the Community Redevelopment Law.

18 14. Respondent and Defendant City of San Jose is a charter city organized under
19 the constitution and laws of the State of California. Among other things, the City was
20 identified as the Lead Agency for the Ballpark Project in a Notice of Preparation for the
21 2010 SEIR, dated November 17, 2009, and in a Notice of Determination for approval of the
22 Option Agreement and sale of the Diridon Property for the Ballpark Project, dated
23 November 8, 2011. The City is principally responsible pursuant to CEQA for conducting a
24 legally-sufficient environmental review for the Ballpark Project, including preparation of
25 environmental documents (1) that accurately describe the Project, the environmental
26 baseline, and the potentially significant impacts of the Project; and (2) that evaluate
27 mitigation measures and/or alternatives to lessen or avoid any significant impacts. The
28 City, acting through the City Council and other agencies, is also responsible for approving

1 the Project in reliance on adequate environmental review under CEQA and in compliance
2 with all other applicable state and local laws.

3 15. Respondent and Defendant City Council is the duly-elected legislative body
4 of the City charged by law with a number of legal duties in respect to the Ballpark Project,
5 including complying with the requirements of CEQA and the San Jose Municipal Code.
6 The City Council is one of the decision-making agencies within the City for the sale of the
7 Diridon Property to AIG, and is responsible, in part, for the actions and decisions approving
8 the Ballpark Project that are challenged herein.

9 16. Respondent and Defendant Redevelopment Agency is the duly chartered
10 redevelopment agency for the City of San Jose, formed and operating pursuant to the
11 Community Redevelopment Law, Health and Safety Code § 33000 *et seq.* On November
12 9, 2005, the Redevelopment Agency filed applications with the City for the preparation of
13 an EIR for a proposed baseball stadium project, and the Agency is identified as the City
14 body responsible for acquisition of the entire Ballpark Project site including the Diridon
15 Property. As previously alleged, starting in 2005, the Agency acquired the Diridon
16 Property using public tax-increment funding and owned the property until the 2011 transfer
17 to the DDA.

18 17. Respondent and Defendant DDA is a joint powers authority created by the
19 City and the Redevelopment Agency in March 2011 for the purpose, among others, of
20 holding title to the Diridon Property upon transfer from the Agency in an effort to avoid the
21 effects of the proposed changes to the redevelopment laws. The DDA is a party to the
22 Option Agreement as approved in joint session with the City Council on November 8, 2011.
23 The Option Agreement grants AIG an option to purchase the Diridon property from the
24 DDA, subject to certain conditions, including that the property may be used only for a
25 ballpark and incidental uses.

26 18. Petitioners are unaware of the true names of Respondents and Defendants
27 sued as Does 1 through 10, inclusive. Petitioners are informed and believe, and on that
28 basis allege, that Respondents Does 1-10, inclusive, are individuals, entities or agencies

1 with authority to approve and/or with an interest in the Ballpark Project. When the true
2 identities and capacities of these Respondents have been determined, Petitioners will, with
3 leave of Court if necessary, amend this Petition to insert such identities and capacities.

4 19. Petitioners are informed and believe, and on that basis allege, that Real Party
5 in Interest AIG is an entity associated in some manner with the Oakland Athletics baseball
6 club. Among other things, AIG is the entity to whom the DDA granted the exclusive option
7 to purchase the Diridon Property as alleged herein.

8 20. Petitioners are unaware of the true names of Real Parties in Interest sued as
9 Does 11 through 20, inclusive. Petitioners are informed and believe, and on that basis
10 allege, that Real Party in Interest Does 11-20, inclusive, are individuals, entities or agencies
11 with authority to approve and/or with an interest in the Ballpark Project. When the true
12 identities and capacities of these Respondents have been determined, Petitioners will, with
13 leave of Court if necessary, amend this Petition to insert such identities and capacities.

14 JURISDICTION AND VENUE

15 21. This Court has jurisdiction over this proceeding pursuant to Code of Civil
16 Procedure §§ 1085 and 1094.5, Public Resources Code §§ 21168 and 21168.5, and Article
17 VI, § 10 of the California Constitution.

18 22. Venue is proper in this Court pursuant to Code of Civil Procedure §§ 394
19 and 395, in that the causes of action alleged herein arose in Santa Clara County, where the
20 Ballpark Project is proposed for development and where Respondents took actions to
21 approve the Project as alleged herein.

22 COMPLIANCE WITH CEQA PROCEDURAL REQUIREMENTS

23 23. Petitioners have timely filed the instant action, in that the City posted the
24 Notice of Determination ("NOD") under CEQA for the Ballpark Project on November 8,
25 2011, and this action has been commenced prior to the 30th day following posting of the
26 NOD.

1 require a public vote “if the property is being acquired for potential housing and the future
2 use of such property as a sports facility is speculative” (emphasis added). The
3 memorandum also concluded that voter approval *would be required* before property
4 acquisition “if the Site were acquired solely for a potential ballpark, without a legitimate
5 alternative use for the property such as housing” (emphasis added).

6 **Acquisition of the Diridon Property for “Housing,”**
7 **and Agreement to Public Vote and CEQA Compliance Before any Ballpark Decision**

8 29. In May 2005, the Redevelopment Agency began efforts to assemble the
9 Diridon Site by acquiring privately-owned parcels. The Agency’s Board explained that the
10 Diridon Site was to be assembled for “transit-oriented mixed-use housing development,
11 consistent with the . . . Diridon/Arena Strategic Development Plan” (emphasis added). The
12 Board discussed the Diridon Site in the context of several other “Agency land assemblies
13 for housing development;” however, the Agency also indicated the site was a potential
14 location for a baseball stadium. In regard to the possible baseball stadium alternative, the
15 Redevelopment Agency determined that “[P]rior to the City Council making any decision
16 as to a potential ballpark, voter approval is necessary as required by the City Charter and an
17 EIR would need to be completed.” Development Agency Board Memoranda, dated
18 November 8, 2005, and February 28, 2006 (emphasis added).

19 30. In the period 2005 to 2008, the Redevelopment Agency acquired the
20 following six parcels, totaling approximately 4.9 acres within the larger Diridon Site: 105
21 South Montgomery; 150 South Montgomery; 410 West San Fernando; 102 South
22 Montgomery; 115 South Autumn; and 645 Park Avenue. The Agency paid for these
23 parcels with tax-increment funds derived from San Jose taxpayers. The total acquisition
24 cost for the Diridon Property was \$25,160,000 (including approximately \$1 million in
25 relocation payments). These six parcels constitute the Diridon Property that the DDA now
26 has committed to sell to AIG under the terms and conditions of the Option Agreement.

Environmental Review

31. On or about February 17, 2006, the City filed a notice of availability of a Draft Environmental Impact Report ("2006 Draft EIR") prepared for a proposed baseball stadium in the Diridon/Arena area ("Original Stadium Proposal"). The Redevelopment Agency was identified as the applicant for the project, which involved an approximately 1.5 million square-foot, 45,000 seat major league baseball stadium, a 1,200 space parking structure, and a future commercial development site, on approximately 23.1 acres in downtown San Jose. State, regional and local agencies, organizations and individuals submitted comment letters and/or provided comments at public meetings regarding inadequacies of the 2006 Draft EIR, including potential impacts to transportation, circulation and parking.

32. In January 2007, after revising and re-circulating the cultural resources section of the 2006 Draft EIR in August 2006, the City circulated the "First Amendment to the Environmental Impact Report (Responses to Comments)" ("First Amendment") for the baseball stadium proposal in the Diridon/Arena area. This First Amendment, together with the 2006 Draft EIR, constituted the final 2007 EIR for the proposed project.

33. Petitioners are informed and believe, and on that basis allege, that the Planning Commission of the City certified the 2007 EIR on February 28, 2007. Because no action was taken by the Planning Commission or any other City agency to approve any aspect of a Ballpark Project at that time, and no Notice of Determination filed, there was no opportunity for any party to seek judicial review of the adequacy of the 2007 EIR.

34. Approximately three years later, in February 2010, the City prepared and published a draft SEIR ("2010 Draft SEIR") for a baseball stadium in the Diridon/Arena Area ("Modified Stadium Proposal"). The primary purpose of the 2010 Draft SEIR was to describe modifications to the Ballpark Project and consider whether those modifications required any change in the environmental analysis contained in the 2007 EIR. The 2010 Draft SEIR also corrected a traffic error in the 2007 EIR. However, despite the passage of

1 time since preparation of the 2007 EIR, the City did not undertake an update of the
2 environmental analysis in all potential impact areas.

3 35. SFSJ submitted a comment letter on the intended scope of the 2010 Draft
4 EIR on December 16, 2009. Following publication of the 2010 Draft SEIR in February
5 2010, SFSJ submitted an additional comment letter on March 29, 2010, describing
6 inadequacies in the 2010 Draft SEIR. Comments letters criticizing the analysis were also
7 submitted by agencies and others. Following the close of the public comment period, the
8 City evaluated and responded to the comments. The final 2010 SEIR, together with the
9 First Amendment thereto containing the City's response to comments, was published in
10 May 2010.

11 36. Under San Jose Municipal Code Title 21, the Planning Commission
12 conducted a hearing on the 2010 SEIR on May 19, 2010. Following testimony, the
13 Planning Commission certified that the 2010 SEIR had been completed in compliance with
14 CEQA.

15 37. On May 24, 2010, SFSJ appealed the Planning Commission's certification of
16 the 2010 SEIR to the City Council, supported by an additional comment letter dated
17 May 19, 2010.

18 38. On June 15, 2010, the City Council conducted a hearing on the appeal of the
19 Planning Commission's certification of the 2010 SEIR. At the hearing, SFSJ and others
20 presented evidence and testimony about the inadequacies of the 2010 SEIR, and explained
21 why additional review was required, especially in regard to transportation, traffic,
22 cumulative impacts, and alternatives. At that time, the Mayor commented on the need for
23 more detail and promised additional environmental review when there actually was a
24 project:

25 And that's part of what makes this interesting is everybody wants to
26 talk about the details of the non-project. Everybody wants to know
27 about the transportation and parking management plan. And certainly,
28 we do, but there's nobody to negotiate the transportation parking and
management plan with because we don't have a project. . . .

1 [A]fter we have a project there will be more environmental [W]hen
2 we have a project, there will be additional environmental review at
3 the project level. . . . Because I know people have a lot of questions
 that will be answered later when we have a project and we can
 address them, too.”

4 Transcript of June 15, 2010 City Council hearing, pp. 49-50 (emphasis added).

5 39. Following close of testimony, the City Council determined that the 2010
6 SEIR had been completed in compliance with CEQA, the State CEQA Guidelines (14 Cal.
7 Code Regs. § 15000, *et seq.*) (“CEQA Guidelines”) and the provisions of Title 21 of the
8 San Jose Municipal Code. However, no action to approve the Ballpark Project was taken
9 by the Council in reliance on the 2007 EIR and the 2010 SEIR, and no Notice of
10 Determination was filed. As in 2007, there was no opportunity for any party to seek
11 judicial review of the sufficiency of the environmental documents.

12 **Redevelopment Law Change, Formation of the DDA,**
13 **and Transfer of Diridon Property to the DDA**

14 40. In or about January 2011, the Governor proposed new State-wide legislation
15 for redevelopment agencies in California. In an attempt to avoid this new law, the City
16 formed a new public agency to which the Redevelopment Agency would transfer the
17 Diridon Property. Petitioners are informed and believe, and on that basis allege, that on or
18 about March 8, 2011, the City and the Redevelopment Agency formed the DDA as a joint
19 powers authority pursuant to Government Code § 6500 *et seq.*, and a joint powers
20 agreement. Petitioners are further informed and believe, and on that basis allege, that
21 thereafter the Redevelopment Agency transferred the Diridon Property to the DDA for no
22 consideration.

23 41. In June 29, 2011, the new statutes, AB 26 and AB 27 (“AB26/27”), were
24 signed into law. On July 18, 2011, the City, along with others, filed a petition of writ of
25 mandate and request to stay the new laws in the California Supreme Court. The Supreme
26 Court granted a partial stay and held a hearing on the petition on November 10, 2011. A
27 decision in that matter is anticipated in January 2012.

28

1 42. The intent of the new redevelopment law is "to preserve, to the maximum
2 extent possible, the revenues and assets of redevelopment agencies so that those assets . . .
3 may be used by local governments to fund core governmental services including police and
4 fire protection services and schools. It is the intent of the Legislature that redevelopment
5 agencies take no actions that would further deplete the corpus of the agencies' funds"
6 Health & Safety Code § 34167(a).

7 43. Because several redevelopment agencies—including the San Jose
8 Redevelopment Agency—attempted to circumvent the new law by transferring property out
9 of their redevelopment agency to a new entity, the new law includes a "claw-back"
10 provision, and declares that any post-January transfers are unauthorized:

11 [T]he Controller shall review the activities of redevelopment
12 agencies in the state to determine whether an asset transfer has
13 occurred after January 1, 2011, between the city or county, or city
14 and county that created a redevelopment agency or any other public
15 agency, and the redevelopment agency. If such an asset transfer did
16 occur during that period and the government agency that received
17 the assets is not contractually committed to a third party for the
 expenditure or encumbrance of those assets . . . the Controller shall
 order the available assets to be returned to the redevelopment
 agency. . . . The Legislature hereby finds that a transfer of assets by
 a redevelopment agency during the period covered in this section is
 deemed not to be in the furtherance of the Community
 Redevelopment Law and is thereby unauthorized.

18 Health & Safety Code § 34167.5 (emphasis added). If property is returned to a
19 redemption agency under AB 26, the agency would be required to dispose of the
20 property "expeditiously and in a manner aimed at maximizing value," with proceeds going
21 to pay for core governmental services, including police, fire and schools. Health & Safety
22 Code § 34177(e).

23 44. To the extent the Diridon Property were to be clawed back under the
24 AB26/27, the Redevelopment Agency would be required to sell the property, for full value,
25 with proceeds going to pay for police, fire and schools. In that event, Respondents could
26 not sell the Diridon Property for a private ballpark use for less than half the appraised value
27 of its highest and best use.

28

1 45. Concerned that AB26/27 would be upheld and the claw-back provision
2 exercised by the Controller, Respondents undertook to encumber the Diridon Property by
3 granting an exclusive option on the Diridon Property in favor of AIG, so they could later
4 argue that the Property was “encumbered” to a third party and arguably outside the effect of
5 the new law. On or about October 26, 2011, just two weeks before the November 10
6 hearing in the Supreme Court, Respondents announced for the first time their intention to
7 enter into the Option Agreement with AIG. Respondents posted a notice and agenda for a
8 joint meeting on November 8, 2011—forty-eight hours before the Supreme Court hearing—
9 to consider and approve the Option Agreement. These were the first actions proposed by
10 the City to carry out the Ballpark Project since the 2007 EIR and 2010 SEIR were “put on
11 the shelf” in July 2010, and Petitioners and the public were thus given less than two weeks
12 notice of these actions.

The Option Agreement

14 46. The Option Agreement recites that the DDA is the owner of the Diridon
15 Property and acknowledges many other potential uses for the property besides baseball,
16 including a mixed-use development with housing, corporate offices, high speed rail, and
17 BART. Under the Option Agreement, for \$50,000, AIG is granted a two-year option to
18 purchase the Diridon Property for \$6,975,227, representing a 50% discount to market value
19 at its highest and best use. AIG has the unconditional right to extend the Option Agreement
20 for another year by paying an additional \$25,000. AIG may use the Diridon Property only
21 for a major league baseball stadium and, as a condition of the exercise of the option, the
22 DDA “may” require a majority vote of the voters of San Jose approving the City’s
23 participation in the building of the ballpark.

47. Within 90 days after the Option Agreement is executed, the DDA is required to provide AIG with a first draft of a purchase and sale agreement. Thereafter, the DDA and AIG are to negotiate the form of purchase agreement to completion such that the definitive agreement is ready to be executed by the DDA and AIG within 15 days after the

1 exercise by AIG of its option. There is no provision for public review in respect to the
2 negotiation and finalization of the definitive purchase agreement.

3 48. The Diridon Property that is subject to the Option Agreement comprises
4 approximately 36.5% of the entire Diridon Site proposed for the Ballpark Project. The
5 Option Agreement may also include additional properties if acquired by the DDA for a
6 ballpark and incidental uses thereto, and if agreed to by the parties. The Agreement further
7 requires that a Construction Management Plan be prepared and agreed to before ballpark
8 construction, and that a Transportation and Parking Management Plan be prepared and
9 agreed to before commencement of operations at the ballpark.

10 **Approval of the Option Agreement**

11 49. In the agenda notice for the November 8, 2011 joint meeting of the City
12 Council and the DDA concerning the sale to AIG, Respondents stated their intent to rely on
13 the 2007 EIR and the 2010 SEIR for purposes of CEQA compliance. Also, for the first
14 time since those environmental documents had been prepared, the City posted a draft
15 CEQA resolution with findings in connection with the November 8 meeting. According to
16 the agenda notice, the purpose of the meeting was to consider (i) approval of a potential
17 sale of certain real property in San Jose to AIG pursuant to the Option Agreement, and (ii)
18 approval of the Option Agreement and authorizing the Executive Director of the DDA to
19 negotiate and execute the purchase agreement and other ancillary documents contemplated
20 by the Option Agreement.

21 50. On November 7, 2011, SFSJ submitted written comments to Respondents
22 concerning their failure to comply with CEQA prior to considering a sale of the Diridon
23 Property for the Ballpark Project. SFSJ attached and incorporated its prior comment letters
24 concerning the inadequacy of the 2007 EIR and 2010 SEIR. SFSJ also explained why
25 Respondents were required under CEQA to update the 2007 EIR and the 2010 SEIR, in
26 light of new facts and changed circumstances, and re-circulate the environmental
27 documents so that the San Jose voters and elected decision-makers could be properly and
28 fully informed about the environmental consequences of the Ballpark Project.

1 76051 and 76053. Petitioners are informed and believe that the Council also approved the
2 Option Agreement and sale to AIG pursuant to City Council Resolution No. 76052 and
3 Ordinance No. 28992. The DDA approved the Option Agreement and property sale to AIG
4 pursuant to Diridon Development Authority Resolution Nos. 105.1, 106.1 and 107.1.
5 (Collectively, the aforementioned resolutions of the City Council and DDA are hereinafter
6 referred to as the "Resolutions" or "Approvals.")

7 54. Also on November 8, 2011, the City filed a Notice of Determination for the
8 Ballpark Project with the Santa Clara County Clerk, stating that the City had approved the
9 Ballpark Project by relying on the 2007 EIR and 2010 SEIR for its actions, and making the
10 following determinations: (1) the proposed project will have potentially significant
11 environmental effects with regard to Transportation, Noise & Vibration, Air Quality,
12 Cultural Resources, Aesthetics and Visual Resources, Shade and Shadow and Global
13 Climate Change; (2) mitigation measures were made a condition of approval of the Project;
14 (3) a Mitigation, Monitoring and Reporting Program was adopted for the Project; (4) a
15 Statement of Overriding Considerations was adopted for the Project; and (5) Findings were
16 made and adopted for the Project, purportedly pursuant to Section 15091 of the CEQA
17 Guidelines. The Notice of Determination also disclosed that sites on the Cortese List of
18 toxic sites are located within the Project area.

19 FIRST CAUSE OF ACTION

20 (Violation of CEQA, Pub. Res. Code §§ 21000 *et seq.*)

21 55. Petitioners incorporate herein by reference the allegations set forth in
22 paragraphs 1 through 54, inclusive.

23 56. The primary goal of CEQA is to "[e]nsure that the long-term protection of
24 the environment shall be the guiding criterion in public decisions." CEQA § 21001(d). To
25 achieve this goal, public agencies are required to consider a legally adequate EIR before
26 approving any project with potentially significant effects on the environment. The purposes
27 of the EIR include, among other things, to provide public agencies and the public with
28 detailed information about the potential effects that a proposed project is likely to have, list

1 ways in which those effects of a project might be minimized, and identify alternatives to the
2 project. CEQA §§ 21002, 21002.1(a), 21061; CEQA Guidelines § 15362. CEQA requires
3 that the environmental document and any and all supporting documents and data be
4 available for public review and comment. CEQA § 21092(b)(1).

5 57. As set forth in SFSJ's comment letters to Respondents, including, but not
6 limited to SFSJ's March 29, 2010, May 19, 2010, and November 7, 2011 letters, and in the
7 comment letters submitted by others, the 2007 EIR and 2010 SEIR (together, the "Ballpark
8 EIR") are inadequate for numerous reasons, including, but not limited to, the following.

9 58. The Ballpark EIR's analysis of impacts on transportation, circulation and
10 parking is inadequate because, among other deficiencies, it fails to adequately identify and
11 analyze impacts to intersection and freeway segment levels of service during the 6:00 and
12 7:00 p.m. peak traffic period for the Ballpark Project.

13 59. The Ballpark EIR fails to identify feasible mitigation measures that would
14 reduce impacts to local intersections affected by the Ballpark Project and improperly relies
15 upon the City's Transportation Level of Service Policy ("LOS Policy") to avoid CEQA
16 requirements. Although the EIR found the Project would degrade four intersections to an
17 unacceptable LOS under the LOS Policy in the downtown area in the 6:00-7:00 p.m. peak
18 period, it failed to find those effects to be significant and unavoidable, and failed to propose
19 mitigation measures or alternatives to avoid or lessen those effects to the extent feasible.
20 The City further relied on its LOS Policy to decline to analyze impacts related to, or
21 mitigation or alternatives for, simultaneous events and weekday games in the SEIR.

22 60. The Ballpark EIR's analysis of cumulative impacts is similarly inadequate,
23 including the failure to identify several other development projects in the vicinity of
24 Diridon Station for which the City is or was processing applications. These projects
25 include a proposed 18,000-seat soccer stadium; a mixed-use project combining 600
26 residential units and 30,000 square feet of commercial space located on the site of the
27 Japantown Corporation Yard; two other mixed-use projects (one with 825 residential units
28 and 50,000 square feet of commercial space; the other with 218 units and 22,600 square

1 feet) just south of the Project site near West San Carlos Street; and an urban public market
2 on the east side of Highway 87. All of these projects are as close or closer to the Diridon
3 Site than the other projects considered in the Ballpark EIR's cumulative impacts analysis.
4 Accordingly, the EIR must be revised and re-circulated to include ongoing and foreseeable
5 projects in the cumulative impacts analysis.

6 61. Respondents also inadequately considered the Berryessa Flea Market
7 Alternative ("Berryessa Alternative"), which the EIR determined to "remain feasible." *See*
8 2010 SEIR, p. 122. Respondents acknowledged that the Berryessa Alternative could result
9 in reduced traffic impacts while achieving key project objectives. In the CEQA Findings
10 adopted at the November 8, 2011 hearing, the City Council determined that the Berryessa
11 Alternative would "achieve key project objectives." The Findings further state that
12 "[i]mpacts associated with the [Berryessa Alternative] would mostly be similar to the
13 modified Project. Impacts related to traffic could be reduced if this alternative were built
14 after completion of a BART extension." *Ibid.* The Council never rejected the Berryessa
15 Alternative as infeasible, but instead found that "it could present new significant and
16 unavoidable impacts related to cultural resources without additional research." This
17 conclusory statement was not supported by substantial evidence in the record, nor is there
18 evidence that additional research was conducted. The Berryessa Alternative would
19 substantially lessen the significant traffic impacts of the Project (which still would not be
20 reduced to less-than-significant levels at the Diridon site), and would not require relocation
21 of the PG&E substation. By approving the Ballpark Project in its proposed location and
22 rejecting the Berryessa Alternative without due consideration or further study given the
23 change in the planned BART extension—that is, to terminate at Berryessa—Respondents
24 acted in violation of CEQA.

25 62. Respondents also engaged in improper "piecemealing" in violation of
26 CEQA. Under CEQA, a "project" is defined as "the whole of an action, which has a
27 potential for resulting in either a direct physical change in the environment, or a reasonably
28 foreseeable indirect physical change in the environment." CEQA Guidelines § 15378(a);

1 *see also* CEQA § 21065. CEQA forbids segmenting a project into separate actions in order
2 to avoid environmental review of the “whole of the action.” Furthermore, CEQA requires
3 the lead agency to consider the entire project at the earliest possible stage, including all
4 reasonably foreseeable phases of the project. In this regard, Respondents violated CEQA
5 by, without limitation, the following:

6 (a) Failing to analyze the environmental impacts of land use conflicts associated
7 with the Ballpark Project. The Ballpark EIR acknowledged that the proposed stadium is
8 inconsistent with General Plan land use designation for the stadium site, as well as the
9 Diridon/Arena Strategic Development Plan, the Midtown Specific Plan, and Burbank/Del
10 Monte and Delmas Park Neighborhood Plans. Nevertheless, the EIR erroneously declined
11 to analyze the environmental effects of such land use policy conflicts, instead improperly
12 deferring such analysis until a specific stadium proposal was before the City.

13 (b) Approval of the Option Agreement constitutes improper piecemealing
14 because Respondents neglected to consider the Transportation and Parking Management
15 Plan (“TPMP”) and Construction Management Plan (“CMP”) for the Ballpark Project,
16 which plans are required under the Option Agreement and should be included in the CEQA
17 analysis at this time—and not deferred to future study and consideration. These plans are
18 integral to the Project as a whole, which is why the Option Agreement requires the CMP be
19 developed and agreed to before ballpark construction, and the TPMP developed and agreed
20 to before ballpark operations. The Ballpark EIR fails to analyze impacts from these yet-to-
21 be determined aspects of the Project.

22 63. The Ballpark EIR’s analysis of environmental impacts is also truncated by
23 Respondents’ improper use of an Initial Study for the 2010 SEIR, and the resulting failure
24 to analyze sufficiently a number of potential environmental impacts including, but not
25 limited to, the analysis of cultural resources, hazards and hazardous materials, noise, and
26 land use and planning; and public safety impacts of the Project’s conflicts with the Federal
27 Aviation Administration regulations, including threshold height regulations and with One
28 Engine Inoperative emergency procedures of several airlines.

1 64. The Ballpark EIR further fails to adequately respond to comments on the
2 draft 2010 SEIR. The responses to comments in many instances are conclusory, with no
3 reasoned analysis or data providing support for the conclusions, including the response to
4 Santa Clara Valley Transit Authority's comments regarding effects on bus and shuttle
5 service and a BART extension only to the Berryessa station; the response to a comment
6 regarding the narrowing of Bird Avenue; and the response to SFSJ's comments regarding
7 the cumulative impacts analysis.

8 65. The Ballpark EIR uses an inaccurate environmental baseline in many impact
9 areas by identifying the 2007 EIR as the baseline rather than the actual physical conditions
10 as they existed in 2010, which in turn affects the 2010 SEIR's impact analysis.

11 66. In addition, in SFSJ's November 7, 2011 letter and the attachments thereto,
12 SFSJ submitted comments identifying new significant information and changed
13 circumstances that require recirculation of the environmental impact analysis, including but
14 not limited to that for cumulative projects, traffic, circulation and parking, and land use
15 policies, in order to take into account the following current and ongoing plans and projects
16 and/or changes thereto not considered in the Ballpark EIR:

17 (a) The limited BART extension, which will extend only to the Berryessa
18 Station, approximately three miles away from downtown San Jose, rather than the full 6-
19 station Silicon Valley Rapid Transit Project Alternative;

20 (b) The Third Amendment to Amended and Restated San Jose Arena
21 Management Agreement Among the City, the Redevelopment Agency and San Jose Arena
22 Management, LLC, concerning parking for the San Jose Sharks hockey team;

23 (c) The City's supplemental EIR in progress for the Diridon Station Area Plan
24 for higher intensity/transit-oriented development and the City's "Envision 2040" General
25 Plan update; and

26 (d) Recent projects in the vicinity of the Diridon Station, including, on
27 information and belief, the Sun Garden Redevelopment Project, File Nos. GP10-07-01 and
28

1 PDC10-026, in the vicinity of the Diridon Station area, which proposes the demolition of
2 existing structures and the construction of up to 282,300 square feet of new retail buildings.

3 67. Respondents improperly relied upon outdated traffic, circulation and parking
4 data in the EIR, including, but not limited to, reliance upon the previously-planned BART
5 connection at Diridon Station.

6 68. As SFSJ further commented in its November 7, 2011 letter, the Ballpark EIR
7 must be revised and re-circulated to include analysis relating to the Notice of Preparation
8 for the Victory Court Ballpark in Oakland, issued in November 2010, which is “new
9 information of substantial importance, which was not known ... at the time the previous
10 EIR was certified [and shows that]... alternatives which are considerably different from
11 those analyzed in the previous EIR would substantially reduce one or more significant
12 effects on the environment, but the project proponents decline to adopt the . . . alternative.”
13 CEQA Guidelines § 15162(a)(3)(D).

14 69. Accordingly, by relying upon the Ballpark EIR to approve the sale of the
15 Diridon Property and the Option Agreement for the Ballpark Project, Respondents
16 committed a prejudicial abuse of discretion, failed to proceed in the manner required by
17 law, and failed to support their actions and approvals with substantial evidence.

18 SECOND CAUSE OF ACTION

19 (Violation of CEQA and CEQA Guidelines §§ 15091, 15093, 15096(h) —

20 Failure to Make CEQA Findings and Statement of Overriding Considerations)

21 70. Petitioners incorporate herein by reference the allegations contained in
22 paragraphs 1 through 69, inclusive.

23 71. Public agencies which grant an entitlement for use or other approvals for a
24 project subject to CEQA are required (1) to make written findings for each significant effect
25 of the project (CEQA Guidelines §15091) (“CEQA Findings”), and (2) to adopt a written
26 statement of specific reasons to support their actions approving a project which will result
27 in the occurrence of significant effects that are not avoided or substantially lessened (*ibid*)
28 (“Statement of Overriding Considerations”), which must be supported by substantial

1 evidence in the record. These requirements apply to the "Lead Agency" and any
2 "Responsible Agencies" that grant any form of approval of a project.

3 72. Respondent City Council, acting in the Lead Agency role for purposes of the
4 Ballpark Project, violated its duties under CEQA because the CEQA Findings and
5 Statement of Overriding Considerations adopted by the Council on November 8, 2011, are
6 inadequate and are not supported by substantial evidence in the record.

7 73. Respondent DDA, acting as a separate public agency in the capacity of a
8 Responsible Agency in approving and granting the Option Agreement for the Project,
9 violated its duties by failing to adopt any CEQA Findings or a Statement of Overriding
10 Considerations to support its actions at all.

11 74. Accordingly, Respondents City Council and the DDA, and each of them,
12 committed a prejudicial abuse of discretion and failed to proceed in the manner required by
13 law.

14 **THIRD CAUSE OF ACTION**

15 **(Violation of San Jose Municipal Code Section 4.95 — Public Vote)**

16 75. Petitioners incorporate herein by reference the allegations contained in
17 paragraphs 1 through 74, inclusive.

18 76. Section 4.95 of the San Jose Municipal Code prohibits the use of tax dollars
19 in connection with the building of a sports facility, unless first approved by a majority vote
20 of San Jose voters. San Jose Municipal Code, § 4.95.010.

21 77. Municipal Code § 4.95 was enacted as the result of an initiative petition
22 submitted by the People for Fiscal Responsibility in 1988. Under the City Charter, the City
23 Council had the choice of either approving the proposed initiative ordinance without
24 alteration and adopting the ordinance within ten days, or submitting the initiative ordinance
25 to an immediate vote of the people at a special election. The City Council chose to adopt
26 the ordinance without submitting it to the voters.

27 78. As previously alleged, the Redevelopment Agency began acquiring the
28 Diridon Property in 2005 and, over the next three years, spent more than \$25 million in

1 taxpayer funds to acquire these parcels. The Agency completed these acquisitions without
2 any public vote on the basis that the acquired property could also be used for housing, “a
3 legitimate alternative use” to a ballpark. The Agency also committed to holding a public
4 vote “prior to the City Council making any decision as to a potential ballpark.” Board
5 Memoranda, dated Nov. 8, 2005 and Feb. 28, 2006 (emphasis added).

6 79. Through the Option Agreement, Respondents foreclosed any possibility that
7 the Diridon Property could be used for housing or any other non-ballpark use. Approval of
8 the Option Agreement was manifestly a “decision as to a potential ballpark,” as it requires
9 the property be used only for a baseball stadium.

10 80. Because the Option Agreement commits the taxpayer-funded Diridon
11 Property to exclusive use as a sports facility, a public vote was required before the Option
12 Agreement could be approved. By approving the Option Agreement without a prior public
13 vote, Respondents failed to obey a mandatory duty enjoined by law.

14 81. Accordingly, the approval of the Option Agreement should be set aside and
15 an injunction should be issued to prevent the sale and transfer of the Diridon Property to
16 AIG, until Respondents have complied fully with the law.

17 82. Other than the relief sought herein, Petitioners lack any plain, speedy, or
18 adequate remedy at law, and Petitioners’ interests will be irreparably harmed if the Diridon
19 Property is transferred to AIG pursuant to the Option Agreement without compliance with
20 law.

21 **FOURTH CAUSE OF ACTION**

22 **(Violation of C.C.P. § 526a and Common Law Taxpayer Claim —** 23 **Unauthorized and Illegal Expenditure and Use of Property)**

24 83. Petitioners incorporate herein by reference the allegations contained in
25 paragraphs 1 through 82, inclusive.

26 84. Code of Civil Procedure § 526a authorizes an action to obtain a judgment,
27 restraining and preventing any illegal expenditure of or injury to public funds or property.
28 The common law also recognizes a taxpayer action on similar grounds.

1 85. In approving the Option Agreement, Respondents unlawfully and in
2 violation of CEQA and the San Jose Municipal Code § 4.95, as heretofore alleged. In
3 addition, Respondents' actions are unauthorized under and in violation of the new
4 Community Redevelopment Law. The California Legislature determined in Health &
5 Safety Code § 34167.5 that a transfer of property by a redevelopment agency after
6 January 1, 2011 "is deemed not to be in the furtherance of the Community Redevelopment
7 Law and is thereby unauthorized" (emphasis added). Accordingly, the Redevelopment
8 Agency's transfer of the Diridon Property to the DDA, and the DDA's ensuing Option
9 Agreement to sell that property to AIG, are unauthorized and illegal.

10 86. Respondents also failed to comply with Health & Safety Code § 33433 in
11 connection with their approval of the Option Agreement. While Respondents prepared a
12 "Summary Report" and purported to make certain findings under Health & Safety § 33433,
13 Petitioners are informed and believe that Respondents failed to publish notice of their
14 November 8, 2011 hearing, in a newspaper of general circulation as required by Health &
15 Safety Code § 33433(a).

16 87. Petitioners are informed and believe that Respondents also failed to comply
17 with the requirements of Government Code § 54222 in connection with their approval of
18 the Option Agreement. In particular, Petitioners are informed and believe that Respondents
19 failed to provide notice and written offers to sell or lease the Diridon Property to the local
20 public entities specified in Government Code § 54222.

21 88. Accordingly, the Option Agreement for the sale of the Diridon Property to
22 AIG constitutes an unauthorized and illegal expenditure, use and transfer of the Property.

23 89. The approval of the Option Agreement should be set aside and an injunction
24 should be issued to prevent the sale and transfer of the Diridon Property to AIG.

25 90. Other than the relief sought herein, Petitioners lack any plain, speedy, or
26 adequate remedy at law, and Petitioners' interests will be irreparably harmed if the Diridon
27 Property is transferred to AIG pursuant to the Option Agreement without compliance with
28 law.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Petitioners pray for judgment as set forth below:

3 I. On the First and Second Causes of Action:

4 A. For a writ of mandate or peremptory writ issued under the seal of this Court
5 and directing Respondents to:

- 6 1. Set aside their certification of the 2007 EIR and the 2010 SEIR;
7 2. Set aside their Approvals of the sale of the Diridon Property under
8 the Option Agreement for the Ballpark Project;
9 3. Refrain from granting any further approvals of the Ballpark Project
10 unless and until Respondents comply fully with the requirements of
11 CEQA as directed by this Court.

12 B. For entry of preliminary and/or permanent injunctive relief prohibiting
13 Respondents from carrying out, implementing, or otherwise acting in
14 furtherance of the Ballpark Project until Respondents have lawfully
15 approved the Project after the requirements of CEQA have been fulfilled;

16 C. For a declaratory judgment stating that Respondents violated CEQA by
17 certifying the 2007 and the 2010 SEIR and approving the Ballpark Project
18 without first fully complying with CEQA;

19 D. For a declaratory judgment stating that the Respondents' approvals of the
20 Project are void, invalid, and of no legal effect.

21 II. On the Third Cause of Action:

22 A. For a writ of mandate or peremptory writ issued under the seal of this Court
23 and directing Respondents to:

- 24 1. Set aside the Approvals of the Option Agreement and sale of the
25 Diridon Property;
26 2. Refrain from granting any further approval for the sale or disposition
27 of the Diridon Property to AIG for use as a ballpark, unless and until
28

- 1 Respondents comply fully with the requirements of San Jose
2 Municipal Code § 4.95.
- 3 B. For entry of preliminary and/or permanent injunctive relief prohibiting
4 Respondents from carrying out, implementing, or otherwise acting to sell the
5 Diridon Property for a Ballpark Project, or otherwise acting in furtherance of
6 the Option Agreement, until Respondents comply fully with the
7 requirements of San Jose Municipal Code § 4.95;
- 8 C. For a declaratory judgment stating that Respondents acted in violation of
9 San Jose Municipal Code § 4.95 by approving the Option Agreement and
10 sale of the Diridon Property without first holding a public vote;
- 11 D. For a declaratory judgment stating that the Respondents' Approvals of the
12 Option Agreement and sale of the Diridon Property are void, invalid and of
13 no legal effect.

14 III. On the Fourth Cause of Action:

- 15 A. For entry of preliminary and/or permanent injunctive relief prohibiting
16 Respondents from carrying out, implementing or consummating the Option
17 Agreement and prohibiting Respondents from otherwise selling or
18 transferring the Diridon Property to AIG for the Ballpark Project.
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1 IV. On all Causes of Action:

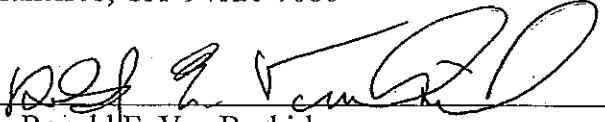
2 A. For Petitioners' fees and costs, including reasonable attorneys' fees and
3 expert witness costs, as authorized by Code of Civil Procedure § 1021.5, and
4 any other applicable provisions of law;

5 B. For such other legal and equitable relief as this Court deems appropriate and
6 just.

7 Dated: December 7, 2011.

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15 By


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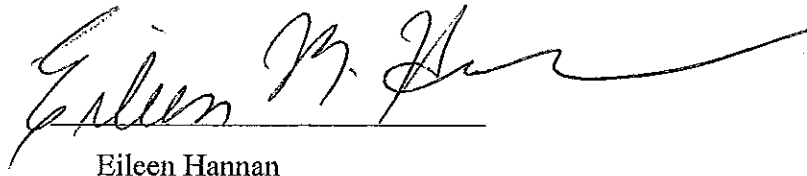
VERIFICATION

I, Eileen Hannan, declare:

I am a resident, voter, taxpayer, and property owner in the City of San Jose, and a member and supporter of Stand for San Jose. I have read the foregoing VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR ATTORNEY'S FEES and know its contents, and state that the matters alleged in the petition and complaint are true to the best of my personal knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this ___ day of December, at San Jose, California.


Eileen Hannan

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STAND FOR SAN JOSE and EILEEN HANNAN
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SANTA CLARA

11
12 STAND FOR SAN JOSE and EILEEN
HANNAN,

13
14 Petitioners and Plaintiffs,

15 vs.

16 CITY OF SAN JOSE; CITY COUNCIL OF
17 THE CITY OF SAN JOSE;
18 REDEVELOPMENT AGENCY OF THE
CITY OF SAN JOSE; DIRIDON
19 DEVELOPMENT AUTHORITY; DOES 1
through 10, inclusive,

20 Respondents and Defendants.
21

22 ATHLETICS INVESTMENT GROUP LLC;
23 DOES 11 through 20, inclusive,

24 Real Parties in Interest.
25

Case No.

CEQA ACTION

PETITIONERS' NOTICE OF INTENT
TO FILE CEQA ACTION

[Public Resources Code § 21167.5]

26 To the City of San Jose, the City Council of the City of San Jose, the
Redevelopment Agency of the City of San Jose, and the Diridon Development Authority:

27 PLEASE TAKE NOTICE, under Public Resources Code § 21167.5, that on
28

1 December 2, 2011, Petitioners and Plaintiffs, Stand for San Jose and Eileen Hannan
2 ("Petitioners"), intend to file a petition under the provisions of the California
3 Environmental Quality Act, Public Resources Code § 21,000 et seq., against Respondents
4 and Defendants; the City of San Jose, the City Council of the City of San Jose, the
5 Redevelopment Agency of the City of San Jose, and the Diridon Development Authority
6 ("Respondents"), challenging all approvals taken in joint session on November 8, 2011,
7 pursuant to City Council Resolution Nos. 76049, 76050, 76051, 76052, 76053; City
8 Council Ordinance No. 28992; and Diridon Development Authority Resolution Nos. 105.1,
9 106.1 and 107.1, for or related to the sale of certain public property ("Diridon Property")
10 and the Option Agreement for Sale of Property to the Athletics Investment Group LLC
11 ("AIG"), for a proposed downtown baseball stadium in the Diridon/Area ("Ballpark
12 Project"), including reliance on the Environmental Impact Report entitled, "Baseball
13 Stadium in the Diridon/Arena Area," and the Supplemental Environmental Impact Report
14 entitled "Baseball Stadium in the Diridon/Arena Area (Modified Project)" ("SEIR")
15 (collectively "EIR/SEIR"), and the Mitigation, Monitoring and Reporting Program,
16 Statement of Overriding Considerations, and Findings made and adopted for the Ballpark
17 Project, purportedly pursuant to §15091 of the State CEQA Guidelines.

18 The petition and complaint will seek a writ of mandamus and/or injunctive relief
19 directing Respondents to set aside the certification of the EIR/SEIR and all findings made
20 in reliance thereon; to set aside the approvals for the sale of the Diridon Property under the
21 Option Agreement and otherwise; and to refrain from granting any further approvals of the
22 Ballpark Project, or carrying out, implementing, or otherwise acting in furtherance of the

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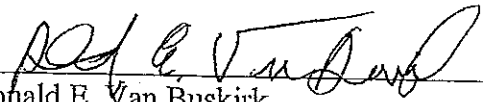
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1 Ballpark Project in any way, unless and until Respondents comply fully with the
2 requirements of CEQA and other laws.

3 Dated: December 2, 2011

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8 By 
9 Ronald E. Van Buskirk
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Richard Keit, Managing Director
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11 STAND FOR SAN JOSE; EILEEN HANNAN;
12 MICHELLE BRENOT; ROBERT BROWN; KAREN
13 SHIREY; FRED SHIREY; and ROBERT SHIELDS

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 IN AND FOR THE COUNTY OF SANTA CLARA

16 STAND FOR SAN JOSE; EILEEN
17 HANNAN; MICHELLE BRENOT;
18 ROBERT BROWN; KAREN SHIREY;
19 FRED SHIREY; and ROBERT SHIELDS,

20 Petitioners and Plaintiffs,

21 vs.

22 CITY OF SAN JOSE; CITY COUNCIL OF
23 THE CITY OF SAN JOSE;
24 REDEVELOPMENT AGENCY OF THE
25 CITY OF SAN JOSE; DIRIDON
26 DEVELOPMENT AUTHORITY; DOES 1
27 through 10, inclusive,

28 Respondents and Defendants.

29 ATHLETICS INVESTMENT GROUP LLC;
30 DOES 11 through 20, inclusive,

31 Real Parties in Interest.

Case No. 111-CV-214196

CEQA ACTION

NOTICE TO THE CALIFORNIA
ATTORNEY GENERAL

[Code of Civil Procedure § 388; Public
Resources Code § 21167.7]

32 PLEASE TAKE NOTICE, pursuant to Code of Civil Procedure § 388 and Public
33 Resources Code § 21167.7, that on December 7, 2011, Petitioners and Plaintiffs Stand for

1 San Jose, Eileen Hannan, Michelle Brenot, Robert Brown, Karen Shirey, Fred Shirey and
2 Robert Shields filed a verified first amended petition for writ of mandamus and complaint
3 for declaratory and injunctive relief and for attorney's fees ("Petition and Complaint")
4 against Respondents and Defendants, the City of San Jose, the City Council of the City of
5 San Jose, the Redevelopment Agency of the City of San Jose, and the Diridon Development
6 Authority ("Respondents"), alleging that Respondents violated the California
7 Environmental Quality Act ("CEQA"), Public Resources Code § 21,000 et seq., in respect
8 to all approvals taken in joint session on November 8, 2011, pursuant to City Council
9 Resolution Nos. 76049, 76050, 76051, 76052, 76053; City Council Ordinance No. 28992;
10 and Diridon Development Authority Resolution Nos. 105.1, 106.1 and 107.1, for or related
11 to the sale of certain public property ("Diridon Property") and the Option Agreement for
12 Sale of Property to the Athletics Investment Group LLC ("AIG"), for a proposed downtown
13 baseball stadium in the Diridon/Area ("Ballpark Project"). The Petition and Complaint
14 alleges that Respondents failed to comply with CEQA in numerous respects, including by
15 relying on an Environmental Impact Report entitled, "Baseball Stadium in the
16 Diridon/Arena Area," and the Supplemental Environmental Impact Report entitled
17 "Baseball Stadium in the Diridon/Arena Area (Modified Project)" ("SEIR") (collectively
18 "EIR/SEIR") which are insufficient under CEQA, and in adopting a Mitigation, Monitoring
19 and Reporting Program, Statement of Overriding Considerations, and Findings for the
20 Ballpark Project, purportedly pursuant to Section 15091 of the State CEQA Guidelines, all
21 in violation of CEQA. A copy of the Petition and Complaint is attached to this notice.
22

23 Dated: December 7, 2011

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Post Office Box 7880
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26
27 By


Ronald E. Van Buskirk
Attorneys for Petitioners and Plaintiffs

PROOF OF SERVICE BY MAIL

I, Michael R. Wilson, the undersigned, hereby declare as follows:

1. I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Winthrop Shaw Pittman LLP in the City of San Francisco, California.

2. My business address is 50 Fremont Street, San Francisco, CA 94105-2228. My mailing address is 50 Fremont Street, P. O. Box 7880, San Francisco, CA 94120-7880.

3. On December 7, 2011, at 50 Fremont Street, San Francisco, California, I served a true copy of the attached document(s) titled exactly NOTICE TO THE CALIFORNIA ATTORNEY GENERAL and VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDAMUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR ATTORNEY'S FEES by placing it/them in an addressed, sealed envelope clearly labeled to identify the person being served at the address shown below and depositing it/them in the United States Postal Service on that date:

Kamala D. Harris
Office of the Attorney General
455 Golden Gate, Suite 11000
San Francisco, CA 94102-7004

I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th day of December, 2011, at San Francisco, California.



Michael R. Wilson